

Claims 1 and 30 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner asserted that “[t]he use of the and/or renders the claim indefinite since the scope of the claim is unclear.”

Applicants respectfully disagree with the 35 U.S.C. § 112, second paragraph rejection of claims 1 and 30 and respectfully request that the Examiner withdraw it. Contrary to the Examiner’s apparent assertion, the use of “and/or” in claims 1 and 30 does not render those claims indefinite or make the scope of the claims unclear. As evidenced by the attached photocopy of page 84 of Webster’s Ninth New Collegiate Dictionary, “and/or” is defined in the dictionary as being a conjunction “used as a function word to indicate that two words or expressions are to be taken together or individually.” With such a recognized definition of “and/or,” Applicants respectfully submit that one of ordinary skill in the art would be able to readily appreciate the meaning of this term in claims 1 and 30. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 112, second paragraph. If, on the other hand, the Examiner refuses that request, Applicants would appreciate a better explanation of the basis for the rejection.

Claims 1, 12, 14-16, 21, 22, 25-27, 30-32, and 50-54 were rejected under “35 U.S.C. § 102(a or e)” based on U.S. Patent 6,178,255 to Scott et al. (“Scott et al.”); claims 1-3, 9-26, 30-40, 43-46, and 49-59 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent 6,241,668 to Herzog (“Herzog”); and claims 1-10, 12, 14-16, 18, 27-30, 38-43, 46-50, and 60-62 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent 5,785,960 to Rigg et al. (“Rigg et al.”)

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Applicants respectfully disagree with the claim rejections based on Scott et al., Herzog, and Rigg et al. and respectfully request that the Examiner withdraw them because those references lack any teaching or suggestion of the subject matter set forth in claim 1. In particular, Scott et al., Herzog, and Rigg et al. do not disclose or suggest a process, as recited in claim 1, including, among other aspects, "placing a transfer member in contact with an external portion of an individual so as to obtain a transfer image on the transfer member; and scanning the transfer image."

Scott et al. discloses a scanner for acquiring an optical image of fingerprints. Col. 2, lines 8-10. Rather than having a transfer member being placed in contact with an external portion "so as to obtain a transfer image on the transfer member" and "scanning the transfer image," this reference discloses directly scanning one or more fingers placed in contact with a platen 72. Col. 4, line 39, through col. 5, line 6.

Herzog discloses a medical system architecture including modalities 1-4, such as a computed tomography (CT) unit 1, a magnetic resonance imaging (MRI) unit 2, a digital subtraction angiography (DSA) unit 3, and an X-ray unit 4, for acquiring medical images. Col. 2, lines 20-26. The system also includes a "scanner 16" used to scan "[a]dditional documents, reports, graphics and/or films."<sup>1</sup> Col. 3, lines 32-34. Nowhere in Herzog is there any suggestion or motivation of "placing . . . so as to obtain a transfer image" on a transfer member and "scanning the transfer image." Contrary to the Examiner's apparent assertion in the Office Action at page 5, the mere possibility that Herzog's scanner 16 could possibly be used for "obtaining human scanning

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<sup>1</sup> Applicants note that Herzog's use of the term "and/or" further evidences that such terminology is definite.

information," would not have provided any teaching or suggestion of the process recited in claim 1.

Rigg et al. discloses a method and system for customizing dermatological foundation products. In the method, a device for measuring skin coloration is placed in proximity to a customer's skin in order to obtain a measurement of the customer's skin coloration. Col. 2, lines 16-18 and 50-53. Similar to Scott et al. and Herzog, Rigg et al. lacks any teaching or suggestion of "placing . . . so as to obtain a transfer image" on a transfer member, and "scanning the transfer image," as recited in claim 1.

For at least the reasons set forth above, the rejections under "35 U.S.C. § 102(a or e)" and 35 U.S.C. § 103(a) should be withdrawn and all of the claims should be allowable.

The claim rejections contain numerous conclusory assertions about certain subject matter being disclosed. Applicants do not understand the basis for many of the Examiner's assertions because the Office Action lacks any explanation of how the cited references allegedly disclose such subject matter. If the Examiner insists on maintaining any of the claim rejections, Applicants respectfully request that the Examiner set forth a detailed explanation of the basis for all of the assertions contained in the claim rejection statements.

Applicants respectfully request that the Examiner reconsider the application, withdraw the claim rejections, and issue a Notice of Allowability in a timely manner.

If a telephone conversation might advance prosecution of the present application, the Examiner is invited to contact the undersigned (202-408-4000).

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Applicants note that the Office Action contains numerous assertions regarding the pending claims, Applicants' invention, the cited references, purported inventions of the cited references, and alleged "well-known" information, for example. Applicants respectfully disagree with a number of those assertions and decline to automatically subscribe to any of them, regardless of whether they are specifically identified above.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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## APPENDIX

The following shows changes to the specification and claims as a result of the Amendment attached hereto.

### IN THE SPECIFICATION:

At page 2, line 17, through page 3, line 3:

Another more simplistic approach involves a consumer filling out a preestablished questionnaire and then sending the completed questionnaire (via a delivery service or the Internet) to a cosmetic product distributor that suggests one or more cosmetic products after reviewing the information provided on the [competed] completed questionnaire. Such a process can provide general information useful in advising about some types of basic cosmetic products, but such information is limited by the level of detail in the description provided by the individual and is, therefore, inadequate for many treatments, especially those that are highly specialized and advanced. In addition, both the completion of the questionnaire by the consumer and the evaluation of completed questionnaire by the cosmetic distributor can be time consuming.

At page 8, lines 1-10:

The characteristics of the external portion that are analyzed are preferably characteristics of non-dermatoglyphic body portions. As used herein, the term "non-dermatoglyphic" relates to an external area of the body substantially free of dermatoglyphs, wherein dermatoglyphs are features that do not change as a person ages. For example, dermatoglyphs are located on the inferior surface of the hand in the

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form of fingerprints and palm lines. Some examples of characteristics of "non-dermatoglyphic" body portions include wrinkles, crows eyes, blood vessel networks visible through the skin, skin pores, cosmetic materials applied to an external body portion, viewable features of hair strands including roots, viewable features of skin including pigmentations and groups of skin cells, viewable features of fingernails and toe nails, and exteriorly viewable features of teeth.

At page 12, lines 10-11:

Fig. 8 shows a schematic view of scanned image data being obtained by directly scanning an external portion of the body with the image scanner [show] shown in Fig. 1;

At page 13, lines 8-9:

Fig. 16 is a view of a scanned image of an entire strand of hair, wherein data for the image was obtained according to the direct scanning mode of Fig. 8;

At page 17, line 19, through page 18, line 11:

In an example of the process, a transfer member may be placed in contact with an external body portion having a product, such as a cosmetic product, applied thereto, so that a transfer image relating to one or more characteristics of the product is created on the transfer member. For example, the external portion could include the lips and the product could be a lip care product or a lip makeup product, such as lipstick. One possible type of transfer member is a sheet of absorbent material and this sheet could be in the form of a paper sheet, such as a facial tissue, toilet tissue, or paper towel. The

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sheet of material could be placed in contact with lips of an individual to transfer a lip product, such as lipstick, from the lips to the sheet of material. Fig. 7 shows an example of a scanned image of tissue paper including an imprint of lips formed, for example, from lipstick. This type of scanned image could be used to diagnose the non-retention and/or non-transferability characteristics of lipstick over time. In other words, the process could be used to determine the ability of the lipstick to remain on the lips as a function of time and/or as a function of the number of events when the lips come in contact with other things, such as by kissing. Additionally, such a process could be used to determine coverage of the product on the external body portion.

At page 20, lines 10-22:

In addition to using the transfer member to acquire scanned image data, scanned image data may also be acquired in other scanning modes. Fig. 8 shows an example of the direct scanning mode. In the direct mode, the external portion of an individual (i.e., the arm shown in Fig. 8) is placed in the vicinity of a scanning region 32 of the scanner, and the external portion is scanned with the image scanner 12 to obtain scanned image data. In the example shown in Fig. 8, the scanner 12 includes a scanning region 32 configured in the form of a glass window pane that makes contact with an object being scanned, the external portion of the individual is preferably placed into contact with this scanning region 32 during the scanning. Preferably, the scanner shown in [Figs.] Fig. 8 is a flat bed scanner, and the external portion of the individual is moved into contact with the glass window pane of the scanner 12. If, on the other hand, the scanner is a hand-

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held scanner (not shown), the scanner can be moved to place its scanning region into contact with the external portion of the individual.

At page 22, lines 19-23:

Fig. 13 is an example of a direct mode scanned image showing a skin region having cracks indicating a significant number of dry and/or dead skin cells. Fig. 14 shows another example of a direct mode scanned image of a skin region from an area such as the cheek, wherein the skin region includes micro vessels MV [an] and a number of facial hair strands H, some of which have been shaved shorter than others.

**IN THE CLAIMS:**

30. (Amended) A process of analyzing at least one characteristic of an external body portion of an individual and/or at least one product applied to the external body portion, the process comprising:

acquiring scanned image data according to the process of claim 1; [and]  
displaying an image corresponding to the scanned image data; and  
viewing the displayed image to analyze said at least one characteristic.

38. (Amended) A process for recommending treatment for an external body portion, the process comprising:

analyzing at least one characteristic of an external body portion according to the process of claim 30;

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determining a recommendation of at least one treatment for the external portion;  
and  
providing the treatment recommendation so that the external portion of the  
individual may be treated according to the recommendation.

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